

REMARKS

Claims 2-8 were acted upon in the previous Office Action. All of claims 2-8 have been rejected. Claim 2 has been canceled. No further claims have been canceled and no new claims have been added, leaving claims 3-8 for further consideration. Claims 9-13 have been withdrawn from consideration.

Claim 3 stands rejected under 35 U.S.C. 102 as being anticipated by Harwin. Harwin relates to a shim which is wedged between a graft and a bone tunnel in which the graft is disposed. Thus, the function of Harwin is similar to the function of Applicant's device.

Claim 3 is limited to a rounded bearing surface formed at a first end of the body which is positionable at a proximal end of the bone tunnel, adjacent the mouth of the bone tunnel. The bearing surface comprises rounded surface along the first end of the body and extending outwardly and proximally from an inner one of the two walls, such that at least the one ligament extends adjacent to the rounded surface. The

outer surface of the body (shim) is thus provided which an arc-shaped configuration in plan view, and a curved configuration in an axial section taken through the first end of the body.

While Herwin shows an arc-shaped configuration in plan view (FIG. 3), it fails to show a rounded proximal end edge (FIGS. 2, 4, 5A, 5B). Accordingly, the Harwin device would exercise a chafing relationship with the ligament rubbing against the proximal end edge.

In view thereof, it appears that Harwin fails to anticipate claim 3, as amended. Further, it appears that Harwin fails to teach or suggest the invention defined by claim 3.

Claims 4 and 5 stand rejected under 35 U.S.C. 102 as being anticipated by Kim and by Luscombe. Kim relates to a bone anchor for anchoring a tendon in a femur bone hole. Luscombe relates to a suture anchor. Inasmuch as neither relates to a shim, it appears that neither should be deemed anticipatory of claims 4 and 5.

However, in addition to being limited to "a ligament shim for insertion into a bone tunnel... having

at least one ligament extending through the mouth of the bone tunnel", claim 4 has been amended to include the above-mentioned rounded surface at the proximal end of the shim.

In Kim, the proximal edges shown in FIGS. 2 and 4 are rounded, but in FIGS. 1, 6, 17 are not rounded. It appears, then, that only corner portions of the legs 18 and 20, or 40 and 42, are rounded. There appear to be no bearing surfaces extending outwardly and proximally from an inner wall of the device to an outer wall of the device.

Luscombe is provided with edges which are designed to fit into adjacent bone structure. The Luscombe suture anchor would appear to be unsuitable for use as a shim inasmuch as the sharp edge, such as 3 in FIGS. 3 and 6, 4 in FIGS. 9 and 10, and 105 in FIG. 23, would tend to cut through a shimmed ligament.

Accordingly, it appears that neither Kim nor Luscombe can be said to anticipate claim 4, or suggest claim 4.

Claim 5 depends from claim 4 and would appear to be allowable, at least through dependency.

Claims 6 and 7 stand rejected under 35 U.S.C. 102 as anticipated by Kim. Both claims are related to "a ligament shim for insertion into a bone tunnel... having at least one ligament extending through the mouth..."

As noted above, Kim relates to a bone anchor; that is, Kim shows and describes a fixation device. The invention defined by claims 6 and 7 is a ligament shim, not a fixation device. It is noted in the specification that while the shim may contribute to fixation, it need not do so and is directed to other purposes.

Claims 6 and 7 have been amended in the same manner as previous claims relative to the rounded proximal edge. Kim lacks the edge as now claimed, and therefore appears not to anticipate or teach or suggest the inventions defined in claims 6 and 7. Accordingly, it appears that claims 6 and 7 should be deemed allowable over Kim.

Claim 8 stands rejected under 35 USC 103 as unpatentable over Beck. Beck relates to a bone anchor including "a member for urging the ligament graft flush against the inner surface of the bone tunnel".

Claim 8, as amended, is limited to include a rounded bearing surface formed at the first end (proximal end) of the body, the first end being positionable at a proximal end of the bone tunnel, adjacent the mouth of the bone tunnel. Referring to FIG. 9 of Beck, it is clear that the Beck device is well into the bone and, in fact, extends slightly out of the distal end of the bone, with ligaments extending out the proximal end. Beck lacks the claimed rounded surface along the first (proximal) end of the body, lacks a round surface extending outwardly and proximally from an inner wall to an outer wall, and in Beck no ligament extends adjacent such a rounded surface.

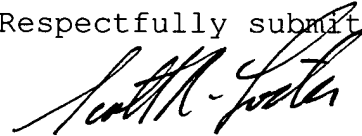
In short, it is believed that claim 8 stands well removed from the teachings of Beck and, as amended should be deemed allowable thereover.

Accordingly, allowance of claims 3-8 appears to be in order and is most respectfully requested.

Drawings were required by the last Office Action and are enclosed herewith (informal).

In event that any additional fees may be required
in this matter, please charge the same to Deposit
Account No. 16-0221.

Respectfully submitted,



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